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comment  
8/5/05

KC 522-05	Cristofalo, Vincent
VAR	05-94

MSA-S-1829-5004

11/15/10  
File originally  
cleaned DSO

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Lt. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

August 5, 2005

Ms. Amy Moredock  
Kent County Department of Planning and Zoning  
Kent County Government Center  
400 High Street  
Chestertown, Maryland 21620

Re: Vincent J. Cristofalo – 05-94RH

Dear Ms. Moredock:

I have received the above-referenced request to locate a swimming pool in the 100-foot Buffer. The property is .86 acres in size, is designated as a Limited Development Area (LDA), and is currently developed with a principle dwelling, deck and shed. I have outlined our comments below.

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In 2002 and 2004, the General Assembly strengthened the Critical Area Law, and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly reaffirmed the stringent standards, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a zoning board finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The Town must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

In this case, the applicant is proposing to place approximately 450 square feet of new impervious surface within the Buffer for a swimming pool. This figure does not include a pool apron area. Because pools are accessory structures, not permitted in the Buffer, the applicant must present competent and material evidence to show that he meets the burden of proof on each of the variance standards described below. Under the law as established by the General Assembly, even if there is nowhere else on the lot to site the proposed pool, the variance cannot be granted unless the applicant proves, and the Board finds, that without the variance, the applicant would suffer an unwarranted hardship, that is, "denial of reasonable and significant use of the entire parcel or lot." We do not believe that this standard is met in this case, and accordingly the variance should be denied. I have discussed each one of the standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.* As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. Based on the information in our file, we do not believe that the Town has evidence on which to base a favorable finding on this factor.
2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical area of the local jurisdiction.* The applicants have reasonable use of this property for residential purposes, and therefore, they would not be denied a right commonly enjoyed by their neighbors. In addition, accessory structures, such as swimming pools, are not permitted in the Buffer. Even if other properties have a swimming pools, certain structures that existed prior to December 1, 1985 or the effective date of the Rock Hall Critical Area Regulations, are considered grandfathered, and do not convey a right for similar structures to be built in the Buffer in the future. The General Assembly made this clear in the 2002 amendments to the Critical Area law, as discussed above. We do not believe that the applicant has met this standard.
3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.* If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the Town's Critical Area. To grant a variance to place new impervious surface in the Buffer where alternative locations and configurations exist, would confer a special privilege on the applicant. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that his proposed variance does not conform to the Critical Area law. We do not believe the applicant has overcome this burden.

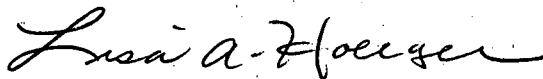
Ms. Moredock  
August 5, 2005  
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4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.* According to the application submitted by the applicant and supplemental information from County staff, it is our understanding this variance request is not based upon conditions or circumstances that are a result of actions by the applicant, or arise from any neighboring conforming condition.
5. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.* In contrast, the granting of this variance is not in harmony with the general spirit and intent of the Critical Area law and regulations. It appears approximately 450 square feet of new impervious surface would be permanently placed within the Buffer. This new impervious surface area and consequential disturbance to the land results in increased stormwater and sediment runoff within the Buffer, and the loss of essential infiltration opportunities. The 2002 and 2004 amendments to the State Critical Area law place increased emphasis on the importance of maintaining the Buffer in a fully vegetated state.

In conclusion, it is our position that, unless the Board finds, by competent and substantial evidence, that the applicant has met the burden of proof to overcome the presumption of non-conformance, and the burden to prove that the applicant has met each one of the Town's variance standards, the Board must deny this application.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Lisa A. Hoerger  
Natural Resources Planner

cc: Ms. Rachel Eisenhauer, Office of the Attorney General  
KC 522-05

**RECEIVED**

MAY 2 2006

CRITICAL AREA COMMISSION  
Chesapeake & Atlantic Coastal Bays  
TOWN OF ROCK HALL**BEFORE THE ROCK HALL BOARD OF APPEALS**

IN THE MATTER OF

VINCENT & MARGARET  
CRISTOFALO

APPEAL NO. 06-03

.....

A hearing was held before the Board of Appeals on Wednesday, March 15, 2006, in the Council Chambers, Rock Hall Municipal Building, Rock Hall, Maryland. Sitting for the Board were R. Benson DuVall, Chairman, Janice White and Robert Kendall, Members. Alice S. Ritchie served as attorney for the Board and Anna Riffin was Clerk. Applicant was represented by C. Daniel Saunders, Esquire

**DECISION**

The Board has before it the Application of Vincent and Margaret Cristofalo, 444 Haverford Avenue, Narbeth, PA 19072, requesting a variance to construct a swimming pool within the 100' Critical Area Buffer on property located at 20739 Bayside Avenue in the Fifth Election District, Kent County, Maryland. Public notice was given, and the property was posted in a conspicuous manner. All interested persons were given an opportunity to be heard in a public hearing held on March 15, 2006. The Board, having read and considered all matters filed in the proceedings and evidence offered, having studied the specific property and the neighborhood, and having deliberated in a public hearing, decides as follows:

**FINDINGS OF FACT**

The Board finds from the evidence before it and the testimony taken in open hearing the following facts. The subject property is .8609 of an acre, improved with a dwelling and shed, and zoned "R-1" Low Density Residential. The property is entirely within the 100' Critical Area buffer. The northwest of the property is marked as marsh on the site plan. The Applicant proposes a 450 square foot pool, 10' from the south east side property line. The dimensions of 15' x 30' include allowance for a deck, fence and any equipment necessary. The Applicant testified that the pool is intended for his grandchildren's use. The property where the pool is proposed is in Flood Zone A10 (Elevation 8'). The adjoining neighbors, on the side where the pool is proposed, testified that there is tidal flooding in the area of the site. They expressed concern that any construction or elevation of the pool could cause bay water to be channeled to their property. The Applicant did not agree that flooding occurred and did not believe it to be a significant problem. Further he testified that some other properties in the neighborhood had pools

The Board received a letter dated August 15, 2005, from the Rock Hall Planning Commission, Anne Leone, Chairman, which stated that the Commission voted to make no recommendation on the variance for a swimming pool within the 100' buffer. The Board received a letter from the Maryland Critical Area Commission, Lisa A. Hoerger, Natural

ALICE S. RITCHIE  
ATTORNEY AT LAW  
P. O. BOX 67  
CHESTERTOWN, MD.  
21620-0067  
TELEPHONE  
410-778-2442

Resource Planner, dated August 5, 2005. The Commission's letter outlined the 2002, 2004 Critical Area legislation; concluded that the Board needed to find that the Applicant had met the burden of proof to overcome the presumption of non-conformance and the burden to prove that the applicant had met each of the Town's variance standards in order for the Board to grant a variance. Carla Martin, Community Planner, for the Town of Rock Hall testified that a pool stops water from entering into the soil, and therefore acts as impervious surface.

### CONCLUSIONS OF LAW

Article V, Section 11.D of the Zoning Code of the Town of Rock Hall (hereafter referred to as Ordinance) prohibits new structures, activities, and facilities permitted in the underlying zoning district within the buffer except for water dependent facilities. Article XIII, Section 9 of the Ordinance authorizes the Rock Hall Board of Appeals to grant variance to the provisions of the Critical Area Overlay Zone where owing to special features of a site or other circumstances a literal enforcement of provisions of the ordinance would result in unwarranted hardship.

The Board finds that the Applicant does not suffer an unwarranted hardship, the applicant does have reasonable and significant use of his land and to deny a pool for his grandchildren would not be denying him a significant use of his land. His property is entirely in the Critical Area buffer, a circumstance which is not self-created, however that factor alone for the purposes of a small pool does not constitute a special condition unique to his property that would deprive the applicant of rights commonly shared by other owners of property in similar areas. The granting of a variance could well confer upon the applicant a special privilege that would be denied to other owners of like property within the Critical Area District. Further, Board finds that the proposal is not in harmony with the spirit of the Town's critical area program

**IT IS THEREFORE**, this 28<sup>th</sup> day of April, 2006, **ORDERED** that the application for a variance be and is hereby **DENIED**.

### ROCK HALL BOARD OF APPEALS

R. Benson McVall / ar  
Robert L. Ladd / ar  
Janice White / ar

# Critical Area Project Information

## I. GENERAL INFORMATION

Jurisdiction: Rent C A Case#:                      Date: 7/26/05

Project Name: Vincent G. Cristofalo

Property Address: 20739 Bayside Ave. Rock Hall, Md

ADC Map Grid:                      Tax ID Number:                     

Local Case#: 05-94RH

Tax Map: 500 Block:              Parcel: 807 Section:              Lot:             

Project Description: Swimming pool within the 100' C.A. Buffer

## II. APPLICATION CATEGORY

Application Type - circle one

Subdivision

Special Exception

Site Plan

Conditional Use

Variance

Rezoning

## III. VARIANCE APPLICATIONS

(Check all that apply.)

- ☒ Buffer
- ☐ Expanded Buffer Variance
- ☐ Impervious Surface
- ☐ Steep Slopes
- ☐ Forest Clearing
- ☐ Setback Variance
- ☐ Other Variance
- Describe Other:

## IV. SITE PLANS AND SUBDIVISIONS AND VARIANCES

Total Site Area: 37,500 Acres sq. ft. Total CA: 37,500 Acres sq. ft.

Intra-family Transfer: ☐ (Check if project involves an Intra-family transfer)

IDA:              Acres Forest Cover:              Acres

LDA: 37,500 Acres Forest Clearing:              Acres

RCA:              Acres % Clearing: 0.00%

Reforestation Required: ☐ (Check if project requires reforestation.)

Afforestation Required: ☐ (Check if project requires afforestation.)

Total On-Site Acres Planted:             

Total Off-Site Acres Planted:             

Total Acres to be Planted with Fees-in-Lieu:             

Reforestation Area:              Acres

Afforestation Area:              Acres

## VI. GROWTH ALLOCATION PROJECTS

Growth Allocation: ☐ (Check if project involves growth allocation)

Classification Change: (check all that apply.)

☐ RCA to LDA

☐ RCA to IDA

☐ LDA to IDA

Adjacency: IDA

LDA

Neither

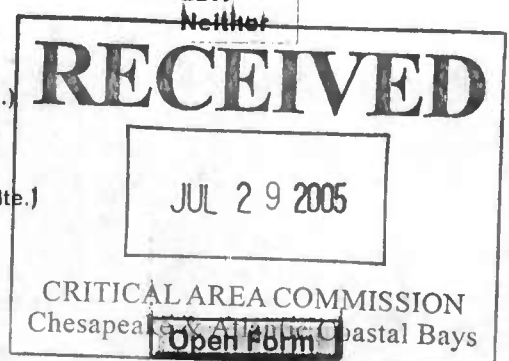
300 Foot Setback: ☐ (Check if project incorporates a 300 foot setback.)

Growth Allocation Acres Deducted:                     

## VII. HABITAT PROTECTION AREAS

(Check all that are present on the site.)

- ☒ Buffer
- ☐ Rare, Threat., End. Species
- ☐ Plant Wildlife Habitat
- ☐ Colonial Waterbirds
- ☐ Waterfowl Staging Area
- ☐ Potential FIDS Habitat
- ☐ Anadromous Fish
- ☐ Other Describe Other:



HPA Protection Measures: ☐ Check if special protection measures are implemented for the HPAs listed.

Describe Measures:                     

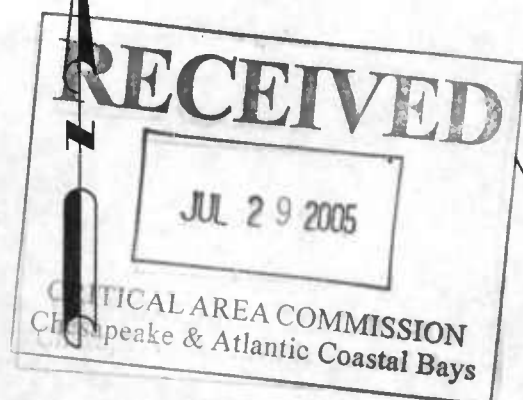
HPA Impacts: ☐ Check if any Habitat Protection Areas will be Impacted by the project.

Describe Impacts:                     

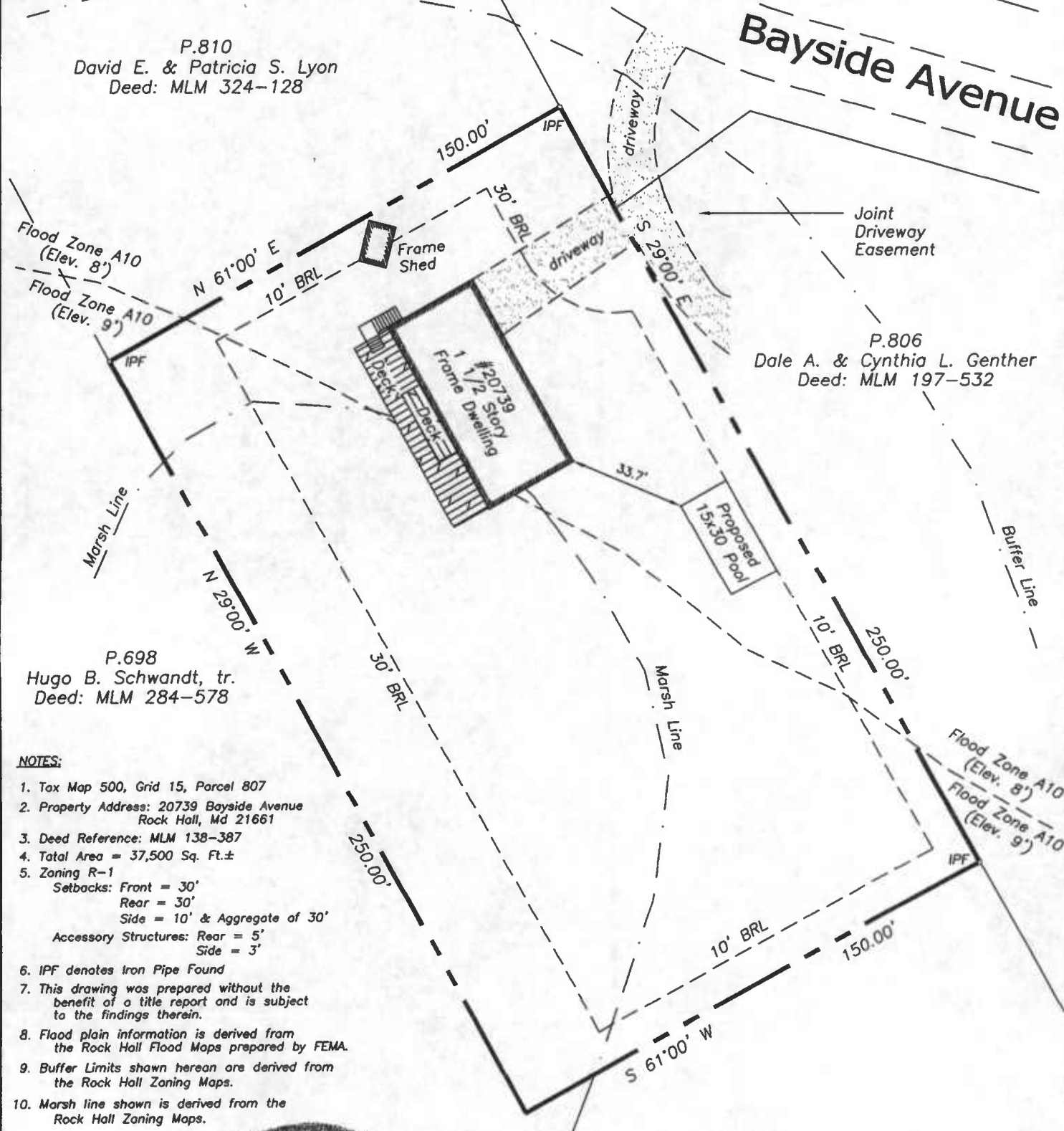
Local Contact Person: Amy Moudock Phone Number: 410-778-7475

Date Response Needed: ASAP Hearing Date: August 10, 2005





VICINITY MAP  
NOT TO SCALE



**NOTES:**

1. Tax Map 500, Grid 15, Parcel 807
2. Property Address: 20739 Bayside Avenue  
Rock Hall, Md 21661
3. Deed Reference: MLM 138-387
4. Total Area = 37,500 Sq. Ft.±
5. Zoning R-1  
Setbacks: Front = 30'  
Rear = 30'  
Side = 10' & Aggregate of 30'  
Accessory Structures: Rear = 5'  
Side = 3'
6. IPF denotes Iron Pipe Found
7. This drawing was prepared without the benefit of a title report and is subject to the findings therein.
8. Flood plain information is derived from the Rock Hall Flood Maps prepared by FEMA.
9. Buffer Limits shown hereon are derived from the Rock Hall Zoning Maps.
10. Marsh line shown is derived from the Rock Hall Zoning Maps.



Site Plan  
20739 Bayside Avenue  
Vincent J. & Margaret F. Cristofalo

Town of Rock Hall, 5th District, Kent County, Maryland  
Scale: 1" = 40' July 21, 2005

William A. Carrall  
Registered Surveyor  
Chestertown, Maryland  
(410) 778-1831